SUPREME COURT OF THE UNITED STATES.

No. 173.—October Term, 1920.

Clay Arthur Pierce, Henry Clay Pierce and Pierce Investment Company, Appellants, *vs.* The United States of America.	Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

[March 7, 1921.]

Mr. Justice Brandeis delivered the opinion of the Court.

In 1907 the Waters Pierce Oil Company, a Missouri corporation, was indicted in the District Court of the United States for the Western District of Louisiana under the Elkins Act (February 19, 1903, c. 708, Section 2, 32 Stat. 847), for receiving rebates. In 1913 the Company sold and transferred all its property to the Pierce Oil Corporation; all the proceeds were paid to Henry S. Priest and Clay Arthur Pierce as trustees; and they distributed the same among the stockholders. Of these Henry Clay Pierce and the Pierce Investment Company, received millions in cash and stock and Clay Arthur Pierce a small amount. In 1914 the case under the Elkins Act was tried. The Company was convicted and sentenced to pay a fine of $14,000, and in the following year the judgment was affirmed by the Circuit Court of Appeals. 222 Fed. 69. An execution issued thereon to the marshal for that district and was returned *nulla bona*. Thereafter this bill in equity was brought by the United States in the Federal District Court for the Eastern District of Missouri against the Waters Pierce Oil Company, the trustees, and these three stockholders to obtain satisfaction of the judgment out of the money remaining in the hands of the trustees and that received by these stockholders. The District Court entered a decree dismissing the bill as against the Waters Pierce Company and the trustees, but granted, as against the stockholders named, the relief prayed by the Government. The decree

was affirmed by the Circuit Court of Appeals for the Eighth Circuit, one judge dissenting. The case is brought here by these defendants, under Section 241 of the Judicial Code. Reversal is sought on several grounds.

First. The ground for reversal most strongly urged is that the judgment imposing a fine on the Waters Pierce Company is not a debt on which a creditor's bill will lie. The argument is that a judgment for a definite sum of money does not necessarily endow the holder with all the rights of a creditor; that a court will look behind a judgment and will grant or deny relief according to the nature of the original cause of action, as it did in *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265; *Louisiana* v. *New Orleans*, 109 U. S. 285; and *Westmore* v. *Markoe*, 196 U. S. 68; and that, since liability for a penalty is criminal in its nature and not strictly a debt, a creditor's bill cannot be brought upon a judgment for a penalty. It is true that to the liability for penalties imposed by the United States certain incidents of a criminal proceeding attach; see *Boyd* v. *United States*, 116 U. S. 616; *United States* v. *Stevenson*, 215 U. S. 190, 199. But the liability is often enforced by civil proceedings and specifically by the action of debt. *Lees* v. *United States*, 150 U. S. 476. See *Adams* v. *Woods*, 2 Cranch. 336, 340; and then certain incidents of civil proceedings attach. *Hepner* v. *United States*, 213 U. S. 103.

By Section 1041 of the Revised Statutes it is provided (in addition to the power existing by general usage to commit a defendant to jail until his fine has been paid, see *Ex parte Barclay*, 153 Fed. 669) that judgments for penalties "may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced." The statute applies to all judgments for penalties, whether recovered by civil or criminal proceedings. A judgment creditor's bill is in essence an equitable execution comparable to proceedings supplementary to execution. See *Ex parte Boyd*, 105 U. S. 647. The law which sends a corporation into the world with the capacity to act imposes upon its assets liability for its acts. The corporation cannot disable itself from responding by distributing its property among its stockholders and leaving remediless those having valid claims. In such a case the claims after being reduced to judgments may be satisfied out of the assets in the hands of the stockholders.[1] There is no good

reason why the rule should be limited to judgments arising out of civil proceedings. To the contention that the statute has not made this process available for the Government in enforcing a penalty, it may be answered as was done by the King's Bench a hundred years ago, in *King* v. *Woolf*, 2 B. & Ald. 609, 611, when it was insisted that a fine due to the Crown was not a judgment debt for which execution could be levied:

"... mischievous consequences would ensue to the crown and the regular administration of justice, from a delinquent withdrawing all his property from the effect of a judgment; and the preventing that will not be a mischievous consequence to anyone but himself. Here there is a judgment that the defendant do pay to the king a fine of a certain sum. By that judgment the debt becomes a debt to the king, of record; and it is payable to the king instanter. ... if we were to say that the Crown shall not be at liberty to issue an immediate execution for its own debt, we should place the crown in a worse situation than any subject."

Second. It is contended that the right to bring a creditor's bill did not exist, because the judgment against the Company was not entered in the trial court until a year after the Company had divested itself of the property sought to be reached in this suit; and the Government did not become a creditor, at all events until after its claim for penalties had ripened into a judgment. But when a corporation divests itself of all its assets by distributing them among the stockholders, those having unsatisfied claims against it may follow the assets, although the claims were contested and unliquidated at the time when the assets were distributed. It is true that the bill to reach and apply the assets distributed among the stockholders cannot, as a matter of equity jurisdiction and procedure, be filed until the claim has been reduced to judgment and the execution thereon has been returned unsatisfied, *Hollins* v. *Brierfield Coal and Iron Company*, 150 U. S. 371; but, as a matter of substantive law, the right to follow the distributed assets (see *Railway* v. *Howard*, 7 Wall 392, 409; *Northern Pacific Ry.* v. *Boyd*, 228 U. S. 482; *Kansas City Ry.* v. *Guardian Trust Co.*, 240 U. S. 166) applies not only to those who are creditors in the commercial sense, but to all who hold unsatisfied claims. A corpora-

[1]Wood v. Dummer, 3 Mason 308; Railroad Co. v. Howard, 7 Wall. 392; Northern Pac. Ry. Co. v. Boyd, 228 U. S. 482, 502; Kansas City Trust Co v. Guardian Trust Co., 240 U. S. 216; Johnson v. Canfield-Swigart Co., 292 Ill. 101; Hastings v. Drew, 76 N. Y. 9.

tion cannot by divesting itself of all property leave remediless the holder of a contingent claim, or the obligee of an executory contract, *Baltimore & Ohio Tel. Co.* v. *Interstate Tel. Co.*, 54 Fed. 50, or the holder of a claim in tort, *Hastings* v. *Drew*, 76 N. Y. 9; *Jahn* v. *Champagne Lumber Co.*, 157 Fed. 407; and there is no good reason why the United States with a claim for penalties should be in a worse plight. Here the stockholders receiving the assets are in the position of volunteers; and there is not even the excuse that they were ignorant of the Government's claim. They were officers of the corporation, and the indictment was pending when the transfer of the assets was made. *See Baltimore & Ohio Tel. Co.* v. *Interstate Tel. Co., supra.*

Third. It is contended that the bill should have been dismissed because the execution issued to the marshal for the Eastern District of Missouri was not returned unsatisfied until after the commencement of the suit. It has been held that in litigations between private parties a creditor's bill cannot be maintained in a Federal court upon a judgment recovered in a State other than that in which suit is brought, *National Tube Works* v. *Ballou*, 146 U. S. 517, 523; and that a return unsatisfied of the execution issued on the judgment sued on is held essential to the maintenance of the creditor's suit, *Taylor* v. *Bowker*, 111 U. S. 110. But this strict rule is not applicable where the United States is the judgment creditor. Under Section 986 of the Revised Statutes an execution issued in favor of the United States by any of its courts runs in every part of the United States; just as under Section 985 an execution on a judgment obtained in favor of any party in a District Court, where the State is divided into two or more districts, may run and be executed in any part of the State. *Toland* v. *Sprague*, 12 Pet. 300, 328. Here the execution issued to the Louisiana marshal had been returned *nulla bona* before this suit was brought; and it is agreed that when this suit was begun the Waters Pierce Oil Company had no property in Missouri or elsewhere out of which the judgment could be satisfied at law. To hold that under such circumstances the suit must fail, because the return of *nulla bona* was not made by the marshal for the Eastern District of Missouri until after the filing of the original bill, would apply a well settled rule to a case not within its scope.

Fourth. It is contended that the bill should have been dismissed because the Government had an adequate remedy by suing

the Pierce Oil Corporation, and, indeed, had commenced such a suit. That corporation assumed, as part of the purchase price of the Waters Pierce Oil Company, its "debts, obligations and liabilities." Before commencing this suit the Government had brought, in a Federal District Court for Louisiana, a suit against the Pierce Oil Corporation to subject to the satisfaction of its judgment certain parcels of land conveyed to the corporation by the Waters Pierce Oil Company. Not in the Louisiana suit the Pierce Oil Corporation denied liability insisting that the Government was not a creditor of the Waters Pierce Oil Company. The United States could not have been required to accept in lieu of its claim against the judgment debtor even an admitted obligation of the new corporation to pay it. The existence of that possible remedy did not bar the Government from following by a creditor's bill the assets of the corporation into the stockholder's hands. Nor did the suit against the Pierce Oil Corporation amount to an election of remedies which should have led the lower courts to dismiss this bill. The two remedies were consistent. See *Zimmerman* v. *Harding*, 227 U. S. 489, 494.

Fifth. The contention is faintly made that the decree should be reversed because the District Court dismissed the bill as against the Waters Pierce Oil Company, a necessary party; citing *Swan Land and Cattle Co.* v. *Frank*, 148 U. S 603, 610. The argument ignores the fact that this judgment being in favor of the United States is, under Section 986 of the Revised Statutes, effective and may be made the basis of an execution running in a State and district other than that in which the judgment was rendered. It was doubtless for this reason that the District Judge concluded that it was unnecessary, if not improper, to enter in this suit judgment against Waters Pierce Oil Company. The objection is purely technical. Since it was not set up among the many errors assigned in the Court of Appeals and in this court, it cannot be availed of here.

Sixth. It is urged that the District Court erred in allowing interest on the penalty ($14,000) from the date of the indictment, January 29, 1907. This was not assigned as error in the Circuit Court of Appeals, and for this reason that court refused to consider it on a petition for rehearing. In the assignment of errors filed in this court the objection was properly raised. Under

Rule 24 of the Circuit Court of Appeals for the Eighth Circuit the court may "notice a plain error not assigned or specified, and we think it should have done so in this case. In allowing interest from January 29, 1907, the District Court was clearly under the misapprehension that that was the date of the judgment, for the decree so recites; whereas, in fact, judgment was not entered until March, 1914. But interest was not even allowable from that time. At common law judgments do not bear interest; interest rests solely upon statutory provision. *Perkins* v. *Fourniquet*, 14 How. 328; *Washington & Georgetown R. R.* v. *Hermon*, 147 U. S. 571, 584-5. The only applicable statute of the United States is Section 966 of the Revised Statutes which provides that "Interest shall be allowed on all judgments in civil causes, . . ." Since the penalty was not recovered by civil process but by judgment in a proceeding initiated by a criminal indictment, it obviously does not fall within the terms of the statute. Interest, therefore, is allowable only on the judgment from the date when it was entered against the defendants in this case, namely March 11, 1918.

The judgment of the Circuit Court of Appeals as modified is

Affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.